He Said, She Said – Now What?
Assessing Witness Credibility

Presented by
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Agenda

- Review Allegations
- Role of the Investigator
- Assessing Credibility
Karen Lee’s Statement

Yesterday, John and I went to a client meeting. After leaving the meeting, we got into a cab. He asked if I would like to go get a drink, since he had a rough day and needed a drink. He also wanted to give me feedback on my presentation at the client meeting. I agreed and he told the cab driver to go to Mi Casita. While we were there, John ordered two pitchers of margaritas, even though I had only been planning to have one drink. While we were drinking, we chatted about work, politics, and other things.

I had called my boyfriend, Brent, and asked him to pick me up at Mi Casita. I told John that Brent was going to pick me up but he kept saying “I want to go dancing. Don’t you want to go salsa or meringue dancing?” I said no, that I was not feeling that well.
Karen Lee’s Statement (Cont.)

Brent was taking a long time, so I told John to go ahead, but he insisted on waiting with me. After a while, he convinced me to get into a cab and go back to the office. He said I could go home from there. Once at the office I went up to the sixth floor with him, got a drink of water and got my things from the office. I then went into John’s office to tell him that I was going to leave. John asked me again why I didn’t want to go dancing. I said Brent was going to pick me up and I needed to go home.
John then grabbed me and pulled me into the hallway. He pushed me against the wall and shoved his hand under my shirt and my bra and grabbed my breast. I shoved him away and told him to get away and said I didn’t want this. John told me I must have given him the wrong idea.

As I rushed to the door, I called Brent’s apartment again and spoke to his roommate, Art. I told Art to come pick me up and gave him the address. I rushed to the front door but could not get the door open. John said “Well, let me get the door at least.” He opened the door and went down the elevator with me and we went outside. Once outside, I told him to please leave, someone was coming to pick me up. He finally got into a cab and left.
John Albert’s Statement

On April 21, 2011, Karen Lee and I decided to go get a drink after work. We arrived at the Mi Casita restaurant and ordered margaritas. We began talking about work, but eventually, Ms. Lee turned the conversation to personal issues. She discussed her childhood and school experiences. Ms. Lee also talked about her relationship with her boyfriend. She said she had misgivings about the relationship. Ms. Lee then asked me if my wife and I had any children. I said we had just lost a baby in January. Ms. Lee told me that she wanted to find a man who loved her enough to refer to her as “goddess” the way I do to my wife. Ms. Lee repeatedly touched my left shoulder or forearm during the time we were at the restaurant.
She also made a lot of eye contact with me and smiled as she touched my arm. Ms. Lee continued to engage me in personal conversation. At one point, she expressed shock at my age, telling me that I looked to be approximately 10 years younger than I am. She also told me I was very good looking. When a flower vendor came through the restaurant and asked me if I wanted to purchase flowers, I told him no. As he started walking away, Ms. Lee said, “What? Aren’t you going to buy me flowers?” I stopped the vendor and bought her flowers.

Ms. Lee began to giggle and said I shouldn’t have done that. She told me I should take the flowers to my wife. I asked if her boyfriend would get jealous, and she said no, that he wouldn’t care. She commented several times that she liked the flowers.
Ms. Lee’s ride never arrived. I offered to pay for her taxi home, but she said no. Ms. Lee decided to return to Bright Circle with me. As we rode to Bright Circle in the taxi, Ms. Lee leaned her head back towards me as if to kiss me. I started leaning towards her to kiss her, but stopped myself. She smiled at me.

When we got back to the office, Ms. Lee playfully asked me whether or not she should call for a ride and whether I would be angry if she left. I said I would not be angry. She giggled as she asked me these questions, and we continued to horse around with the phone. We walked to the water fountain for a drink. We stood there smiling at each other, and I leaned into her for a kiss. Ms. Lee told me she didn’t want to do that. I stopped. She suddenly told me she wanted to leave.
I walked her downstairs. Ms. Lee was very quiet. I asked her if she was OK and she replied that she was fine. I asked her if she wanted me to hail her a cab, and she said no, that she would call her boyfriend or another relative to pick her up. I told her I would wait with her downstairs until her ride showed up. She again said she was fine. I waited with her for a bit, and then I hailed a cab and went home.
The primary role of the investigator is to assess whether or not the concern/allegation raised is valid. That is, the investigator gathers evidence to determine what actually occurred. As a result:

- It is important that the investigator be unbiased and not favor one outcome or another
- The investigator should seek evidence that supports the concern/allegation as well as evidence that undermines or contradicts it
- The investigator should not jump to conclusions or assume he/she knows the outcome, even if he/she has seen similar facts in the past
- Instead, the investigator should let the evidence reveal what occurred
Credibility Assessments

Credibility assessment factors:

1. **Inherent plausibility:**
   Does the witness’s statement make sense?

2. **Demeanor:**
   Totality of response: body language, voice, words chosen, etc.

3. **Corroboration**

4. **Past record**

5. **Motive**
Hypothetical

Is anything suspicious about these responses?

Q: Governor Clinton, have you ever smoked marijuana?
A: I have never violated the drug laws of my country.

Q: Governor Bush, have you ever used cocaine?
A: The White House security check asks about prior drug use, and I could pass that security check.

Q: Henry, have you ever told an ethnic joke in the workplace?
A: Not really. Speaking of jokes, you should hear the ethnic jokes that Todd and Mark tell around here.
Karen’s Interviews

As asked about her statement

• When did she write it?
• Why did she write it?
• Other versions/drafts?
• Who has seen it?
  - Sister?
  - John?
• Did anyone help write or edit it?
Karen’s Interviews

Asked about other documents/records

• Email
• Voicemail
• Notes
• Diary

Asked who she has talked with about the incident

• Sister
• Brent
• Art
• Red (her immediate boss)
Karen’s Interviews

Timeline, phone numbers, duration of calls

Follow-up with people she called/talked to

• Art – confirmed calls, that she sounded upset, asked him to come get her

• Sister – Karen initially hysterical, hard to understand; when calmed enough, explained that she’d been attacked, asked sister to come get her. Later, talked at length back at their apartment (along with Brent)

• Brent – borrowed a phone to call her, spoke to her while she was in sister’s car. Met at their apartment, talked for 2+ hours

• Red – Karen called late to say she wasn’t going to be at work; when he asked why, she said John had attached her at the office. “That girl is not lying.” Told her he’d confer with HR and get back to her
Karen’s Interviews

Asked about why she left the restaurant

• Brent seemed lost

• John didn’t want to leave her alone at restaurant/bar

• John suggested going to the office where she could return computer, projector, collateral and he could feel better about leaving her alone

• Didn’t want to take a cab home because she wanted to connect with Brent (Survivor finale)
  - Brent didn’t have a cell phone so she couldn’t call him
Karen’s Interviews

Taxi ride

• Fell asleep

“Repeated touching”

• None, couldn’t have, given size and position of table
• Later, recalled putting arm or John’s shoulder or arm as she squeezed between tables

Did she ask him to buy her flowers?

• Yes, but it was a joke that he took seriously

Personal conversation topics?

• Variety, including where grew up, etc. Also John’s wife’s miscarriage
• He doesn’t look like he’s in his early forties
Karen’s Interviews

Misgivings about relationship?
• None, trying to see if relationship can continue outside of university

What happened at the office?
• No “horsing around” with cell phone (confused what it could mean)
• Went to John’s office to let him know she was going to go downstairs and wait for Brent to call, then John came over and attacked her

Grabbed her under the arms and dragged/carried her down the hallway a bit in the direction of the kitchen
• He pushed her against the wall (hard) and grabbed her breast
• When she pushed him away, he said she “must have given [him] the wrong signals”
John’s Interviews

Very similar pattern, but with some questions asked early, some saved for end

**Asked about his statement**

- When did he write it?
- Why did he write it?
- Other versions/drafts?
- Who has seen it?
- Did anyone help write or edit it?

**Has anyone described Karen’s allegation?**
John’s Interviews

Employment background – history of discipline of his team members

• Gave details of misconduct and what the discipline was

He confirmed reasons for leaving the restaurant

• No longer an issue
  (example of “narrowing the scope”)

Discussed “flirting” and the signals she was giving him

• Flowers
• Touching
• Horsing around with cell phone near water cooler
Recap of his core explanation

• He almost kissed her, but stopped short
• She became quiet/withdrawn, wanted to leave

Informed him of Karen’s allegation

• Look away, shift body posture
• Dropped voice to near mumble and said “Well, that’s not it, and anyway the lights weren’t on in the kitchen”
• No indication of surprise
John’s Interviews

If you’re telling the truth and all that happened was a near-kiss, then she’s lying, right?

• “In my opinion”

If we determine that she has falsely accused you of sexual assault, what should the discipline be?

• “Maybe a letter in her file?”
Credibility Assessments

Five credibility assessment factors:

1. **Inherent plausibility:**
   Does the witness’s statement make sense?

2. **Demeanor:**
   Totality of response: body language, voice, words chosen, etc.

3. **Corroboration**

4. **Past record**

5. **Motive**
Thank You